

Number: **201447005**
Release Date: 11/21/2014
Index Number: 468B.01-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:ITA:B06
PLR-105353-14

Date:
August 07, 2014

LEGEND

Trust	=	
LLC	=	
Y	=	
X Creditors	=	
Court	=	
Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
Date 5	=	
Date 6	=	
Date 7	=	
State A	=	

Assets	=	
Agreements	=	
Z Services	=	
Liquidating Trust	=	

Dear :

This letter responds to your letter dated February 3, 2014, and subsequent correspondence submitted on behalf of the Trust, requesting a private letter ruling concerning the application of § 468B of the Internal Revenue Code to the Trust. In particular, you requested rulings addressing the following issues:

1. Whether the Trust is a qualified settlement fund under § 1.468B-1 of the Income Tax Regulations.
2. Whether the Debtors will be treated as transferors to the Trust for purposes of § 1.468B-4.

CONCLUSIONS

1. The Trust is a qualified settlement fund under § 1.468B-1.
2. The Debtors will be treated as transferors to the Trust for purposes of § 1.468B-4.

FACTS

LLC and y of its direct and indirect subsidiaries (collectively, the Debtors) sold Assets to the X Creditors pursuant to the Agreements and agreed to perform Z Services in connection with and pursuant to the Agreements. On Date 1, the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Court. The X Creditors filed numerous claims against the Debtors, including claims asserting breach of contract. All of the claims of the X Creditors that will be satisfied by the Trust arose out of the same event or related series of events – the sale of Assets by the Debtors to the X Creditors pursuant to the Agreements and the obligation of the Debtors to perform Z Services.

The Trust was formed on Date 3 as a statutory trust under the State A Statutory Trust Act. The Joint Chapter 11 Bankruptcy Plan (the Plan) of the Debtors and the Official Committee of Unsecured Creditors was confirmed by the Court on Date 4, and became effective on Date 5. The original trust agreement was amended and restated in connection with the confirmation of the Plan (as amended, the Trust Agreement). The Plan provided that the Court would retain exclusive jurisdiction over all matters arising out of, or related to, the Plan, including jurisdiction to hear and determine any matters relating to the Trust.

In addition to the establishment of the Trust, the Liquidating Trust was formed pursuant to the Plan on Date 2 pursuant to a Declaration of Trust as a common law State A trust. The Liquidating Trust was established for the purpose of liquidating the Debtors' assets and distributing the proceeds to the Debtors' unsecured creditors. On Date 6, the Liquidating Trust was converted into a State A statutory trust and the agreement governing the Liquidating Trust (the Liquidating Trust Agreement) was entered into to reflect the terms described in the Plan.

On Date 5, the Debtors transferred all of their cash and remaining assets (with limited exceptions) to the Liquidating Trust, free and clear of any and all liens, claims, encumbrances and interests of all persons and entities. The Liquidating Trust issued beneficial interests in the Liquidating Trust (Liquidating Trust Units) to holders of allowed general unsecured claims against the Debtors (other than the X Creditors and holders of certain other claims), and established a reserve of Liquidating Trust Units for holders of disputed general unsecured claims.

The Trust received Liquidating Trust Units in respect of, and in full and final satisfaction of, the aggregate claims of the X Creditors against the Debtors. As beneficiaries of the Trust, the X Creditors are entitled to receive cash distributions from the Trust as and to the extent that the Trust receives cash distributions from the Liquidating Trust, as provided in the Trust Agreement.

The Liquidating Trust received a private letter ruling on Date 7 (the Liquidating Trust Ruling) which classified the Liquidating Trust as a liquidating trust for federal income tax purposes. Accordingly, the ruling concluded that each holder of Liquidating Trust Units, including the Trust, would be treated as receiving from the Debtors and then transferring to the Liquidating Trust that portion of the assets of the Liquidating Trust allocable to its interest therein (other than those assets allocable to disputed claims). The Liquidating Trust Ruling also concluded that the Liquidating Trust would be a grantor trust and the beneficiaries of the Liquidating Trust would be treated as the owners of the Liquidating Trust.

LAW AND ANALYSIS

1. Classification as Qualified Settlement Fund

The Trust's first requested ruling is that the Trust is a qualified settlement fund under § 1.468B-1 for federal income tax purposes.

Section 468B(g)(1) provides, in part, that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. Section 468B(g)(1) authorizes the issuance of regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise. Sections 1.468B-1 through 1.468B-5 regarding qualified settlement funds were issued pursuant to § 468B(g).

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies the three requirements of § 1.468B-1(c). First, § 1.468B-1(c)(1) requires that the fund, account, or trust be established pursuant to an order of, or be approved by, the United States, any state (including the District of Columbia), territory, possession or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to continuing jurisdiction of the governmental authority. Second, § 1.468B-1(c)(2) provides that the fund, account, or trust be established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and has given rise to at least one claim asserting liability: (i) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); (ii) arising out of tort, breach of contract, or violation of law; or (iii) designated by the Commissioner in a revenue ruling or revenue procedure. Third, § 1.468B-1(c)(3) requires that the fund, account, or trust be a trust under applicable state law, or have its assets segregated from other assets of the transferor (and related persons).

Based on the facts represented by the Trust, the three requirements of § 1.468B-1(c) are satisfied, and as such, the Trust is a qualified settlement fund for federal income tax purposes. First, the Trust was approved by the Court and remains subject to the continuing jurisdiction of the Court. See § 1.468B-1(c)(1). Second, the Trust was established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from a related series of events (i.e., the sale of Assets by the Debtors and the agreement of the Debtors to perform Z Services) and that have given rise to at least one claim asserting liability for breach of contract. See § 1.468B-1(c)(2). Third, the Trust was organized as a trust under applicable state law. See § 1.468B-1(c)(3).

Accordingly, based on the information submitted and representations made, we conclude that the Trust is a qualified settlement fund under § 1.468B-1(c).

2. Debtors Treated as Transferors to the Trust

The Trust's second requested ruling is that the Debtors be treated as transferors to the Trust for purposes of § 1.468B-4.

Section 1.468B-1(d)(1) provides that a "transferor" is a person that transfers (or on behalf of whom an insurer or other person transfers) money or property to a qualified settlement fund to resolve or satisfy claims described in § 1.468B-1(c)(2) against that person.

Section 1.468B-4 provides that whether a distribution to a claimant is includible in the claimant's gross income is generally determined by reference to the claim in respect of which the distribution is made and as if the distribution were made directly by the transferor.

Under the principles applicable to liquidating trusts, and as provided in the Liquidating Trust Ruling, the Debtors are treated for federal income tax purposes as having transferred assets to the Trust in full and final satisfaction of the claims of the X Creditors against the Debtors. As is discussed above, the Trust was established to resolve or satisfy one or more claims described in § 1.468B-1(c)(2).

Thus, we conclude that the Debtors are transferors within the meaning of § 1.468B-1(d)(1) and are transferors to the Trust for purposes of § 1.468B-4.

PROCEDURAL MATTERS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Roy A. Hirschhorn
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)